

REMARKS

The Patent Examiner in charge of the present application, Mr. Michael Thompson, in the Office Action dated March 24, 2003, entered two double patenting rejections in response to the Applicant's last amendment, filed on June 26, 2002. These are the only remaining objections to issuance of patent in the present application.

DOUBLE PATENTING

The Examiner has rejected claims 1-5 and 72-81, the only claims still pending in the present application, under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-42 of U.S. Patent No. 6,068,609 to Ott in view of Grimm U.S. Patent No. 4,303,601. Applicant asks the Examiner to enter the enclosed Terminal Disclaimer disclaiming the term of any patent to issue in the present application which would extend past the term of Patent No. 6,068,609. The entering of this Terminal Disclaimer is believed to overcome the Examiner's obviousness type double patenting rejection and render claims 1-5 and 72-81 patentable. A grant of the patent containing these claims is courteously requested.

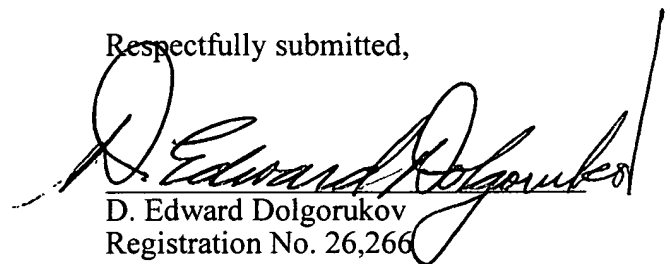
The Examiner has also rejected claims 1-5 and 72-81 as being provisionally rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 34-100 of co-pending application serial number 09/363,234. The Examiner further states "although the conflicting claims are not identical, they are not patentably distinct from each other because both teach an apparatus for treating a gas comprising a housing defining one chamber having an entry port and an exit port, the chamber that contains a volume of liquid in fluid communication with the insufflator, a humidifying means, a container reservoir, the device comprising an opening and a port for filling the container/reservoir, and at least one layer of filter/membrane in the chamber for filtering the gas, water retaining layers and the pre-charging of those layers. He teaches the use of a humidity sensing means and monitoring means to sense and monitor the relative humidity of the gas and act accordingly to maintain that humidity and/or

temperature to include a control means for controlling electrical power and back up container/reservoir.”

With the entry of the attached Terminal Disclaimer to overcome the Examiner’s double patenting rejection of claims 1-5 and 72-81, the Examiner’s provisional double patenting rejection of claims 1-5 and 72-81 is the only remaining rejection in the present application.

Under the provisions of Section 804 of the Manual of Patent Examining Procedure, when a provisional type double patenting rejection is the only rejection remaining in an application, it is to be withdrawn to allow issue of a patent in the application and is then to be reasserted in the remaining pending patent application Serial No. 09/363,234. Therefore, in view of the above remarks, the present application is believed to be in condition for issue and the granting of a patent thereon is courteously solicited. If for any reason the present application is not in condition for allowance, the undersigned attorney of record for Applicant’s specifically requests a telephone interview with the Patent Examiner before any further Office Action is issued.

Respectfully submitted,



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